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Presidential Documents

Title 3—

The President

Proclamation 5602 of January 26, 1987

National Day of Excellence, 1987

By the President of the United States of America

A Proclamation

On January 28, 1986, America lost a great flagship, the Space Shuttle Challenger. Our Nation united in grief for the valiant crew and their families and in renewed resolve to move ahead with the peaceful exploration of space.

Our space program, and the scientists, engineers, and astronauts who have made it possible, symbolize the spirit of America: optimism and ingenuity, daring and determination. Their achievements have been an inspiration and a source of national pride. We admire the brilliance, the courage, and the hard work that have contributed to our country's preeminence in space.

Space exploration and the advanced technology that drives it benefit our laboratories, our industries, our farms, our hospitals, and our homes. This great adventure has enlarged our vision. Going outside our world we have come to know our own planet better—yes, and to love it as a tiny oasis of life in the engulfing vastness and silence of space. Our space program has given us a new confidence in what the future holds. We have seen expanded opportunities for scientific study, for industrial and commercial growth, for security, and for discovery.

We owe an immense debt of gratitude to our space pioneers—especially to those who made the ultimate sacrifice. The crew of the Challenger—Michael J. Smith, Francis R. Scobee, Gregory B. Jarvis, Ronald E. McNair, Judith A. Resnik, Ellison S. Onizuka, and S. Christa McAuliffe—set a high standard in education and training, in skill and courage. We can offer them no finer tribute than a pledge from each of us to strive for excellence in whatever we do—to extend our grasp by reaching beyond it. For they have taught us that the sky is not the limit—not for Americans.

The Congress, by Public Law 99-478, has designated January 28, 1987, as a "National Day of Excellence" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim January 28, 1987, as the National Day of Excellence. I call upon the people of the United States to observe this occasion with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of January, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 87-1841
Filed 1-27-87; 2:34 pm]
Billing code 3195-01-M

Presidential Documents

Executive Order 12580 of January 23, 1987

Superfund Implementation

By the authority vested in me as President of the United States of America by Section 115 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9615 *et seq.*) ("the Act"), and by Section 301 of Title 3 of the United States Code, it is hereby ordered as follows:

Section 1. *National Contingency Plan.* (a)(1) The National Contingency Plan ("the NCP"), shall provide for a National Response Team ("the NRT") composed of representatives of appropriate Federal departments and agencies for national planning and coordination of preparedness and response actions, and regional response teams as the regional counterpart to the NRT for planning and coordination of regional preparedness and response actions.

(2) The following agencies (in addition to other appropriate agencies) shall provide representatives to the National and Regional Response Teams to carry out their responsibilities under the NCP: Department of State, Department of Defense, Department of Justice, Department of the Interior, Department of Agriculture, Department of Commerce, Department of Labor, Department of Health and Human Services, Department of Transportation, Department of Energy, Environmental Protection Agency, Federal Emergency Management Agency, United States Coast Guard, and the Nuclear Regulatory Commission.

(3) Except for periods of activation because of a response action, the representative of the Environmental Protection Agency ("EPA") shall be the chairman and the representative of the United States Coast Guard shall be the vice chairman of the NRT and these agencies' representatives shall be co-chairs of the Regional Response Teams ("the RRTs"). When the NRT or an RRT is activated for a response action, the chairman shall be the EPA or United States Coast Guard representative, based on whether the release or threatened release occurs in the inland or coastal zone, unless otherwise agreed upon by the EPA and United States Coast Guard representatives.

(4) The RRTs may include representatives from State governments, local governments (as agreed upon by the States), and Indian tribal governments. Subject to the functions and authorities delegated to Executive departments and agencies in other sections of this Order, the NRT shall provide policy and program direction to the RRTs.

(b)(1) The responsibility for the revision of the NCP and all of the other functions vested in the President by Sections 105(a), (b), (c), and (g), 125, and 301(f) of the Act is delegated to the Administrator of the Environmental Protection Agency ("the Administrator").

(2) The function vested in the President by Section 118(p) of the Superfund Amendments and Reauthorization Act of 1986 (Public Law 99–499) ("SARA") is delegated to the Administrator.

(c) In accord with Section 107(f)(2)(A) of the Act and Section 311(f)(5) of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1321(f)(5)), the following shall be among those designated in the NCP as Federal trustees for natural resources:

(1) Secretary of Defense;

(2) Secretary of the Interior;

(3) Secretary of Agriculture;

(4) Secretary of Commerce;

(5) Secretary of Energy.

(d) Revisions to the NCP shall be made in consultation with members of the NRT prior to publication for notice and comment. Revisions shall also be made in consultation with the Director of the Federal Emergency Management Agency and the Nuclear Regulatory Commission in order to avoid inconsistent or duplicative requirements in the emergency planning responsibilities of those agencies.

(e) All revisions to the NCP, whether in proposed or final form, shall be subject to review and approval by the Director of the Office of Management and Budget ("OMB").

Sec. 2. *Response and Related Authorities.* (a) The functions vested in the President by the first sentence of Section 104(b)(1) of the Act relating to "illness, disease, or complaints thereof" are delegated to the Secretary of Health and Human Services who shall, in accord with Section 104(i) of the Act, perform those functions through the Public Health Service.

(b) The functions vested in the President by Sections 104(e)(7)(C), 113(k)(2), 119(c)(7), and 121(f)(1) of the Act, relating to promulgation of regulations and guidelines, are delegated to the Administrator, to be exercised in consultation with the NRT.

(c)(1) The functions vested in the President by Sections 104(a) and the second sentence of 126(b) of the Act, to the extent they require permanent relocation of residents, businesses, and community facilities or temporary evacuation and housing of threatened individuals not otherwise provided for, are delegated to the Director of the Federal Emergency Management Agency.

(2) Subject to subsection (b) of this Section, the functions vested in the President by Sections 117(a) and (c), and 119 of the Act, to the extent such authority is needed to carry out the functions delegated under paragraph (1) of this subsection, are delegated to the Director of the Federal Emergency Management Agency.

(d) Subject to subsections (a), (b) and (c) of this Section, the functions vested in the President by Sections 104(a), (b) and (c)(4), 113(k), 117(a) and (c), 119, and 121 of the Act are delegated to the Secretaries of Defense and Energy, with respect to releases or threatened releases where either the release is on or the sole source of the release is from any facility or vessel under the jurisdiction, custody or control of their departments, respectively, including vessels bare-boat chartered and operated. These functions must be exercised consistent with the requirements of Section 120 of the Act.

(e)(1) Subject to subsections (a), (b), (c), and (d) of this Section, the functions vested in the President by Sections 104(a), (b), and (c)(4), and 121 of the Act are delegated to the heads of Executive departments and agencies, with respect to remedial actions for releases or threatened releases which are not on the National Priorities List ("the NPL") and removal actions other than emergencies, where either the release is on or the sole source of the release is from any facility or vessel under the jurisdiction, custody or control of those departments and agencies, including vessels bare-boat chartered and operated. The Administrator shall define the term "emergency", solely for the purposes of this subsection, either by regulation or by a memorandum of understanding with the head of an Executive department or agency.

(2) Subject to subsections (b), (c), and (d) of this Section, the functions vested in the President by Sections 104(b)(2), 113(k), 117(a) and (c), and 119 of the Act are delegated to the heads of Executive departments and agencies, with respect to releases or threatened releases where either the release is on or the sole source of the release is from any facility or vessel under the jurisdiction,

custody or control of those departments and agencies, including vessels bareboat chartered and operated.

(f) Subject to subsections (a), (b), (c), (d), and (e) of this Section, the functions vested in the President by Sections 104(a), (b) and (c)(4), 113(k), 117(a) and (c), 119, and 121 of the Act are delegated to the Secretary of the Department in which the Coast Guard is operating ("the Coast Guard"), with respect to any release or threatened release involving the coastal zone, Great Lakes waters, ports, and harbors.

(g) Subject to subsections (a), (b), (c), (d), (e), and (f) of this Section, the functions vested in the President by Sections 101(24), 104(a), (b), (c)(4) and (c)(9), 113(k), 117(a) and (c), 119, 121, and 126(b) of the Act are delegated to the Administrator. The Administrator's authority under Section 119 of the Act is retroactive to the date of enactment of SARA.

(h) The functions vested in the President by Section 104(c)(3) of the Act are delegated to the Administrator, with respect to providing assurances for Indian tribes, to be exercised in consultation with the Secretary of the Interior.

(i) Subject to subsections (d), (e), (f), (g) and (h) of this Section, the functions vested in the President by Section 104(c) and (d) of the Act are delegated to the Coast Guard, the Secretary of Health and Human Services, the Director of the Federal Emergency Management Agency, and the Administrator in order to carry out the functions delegated to them by this Section.

(j)(1) The functions vested in the President by Section 104(e)(5)(A) are delegated to the heads of Executive departments and agencies, with respect to releases or threatened releases where either the release is on or the sole source of the release is from any facility or vessel under the jurisdiction, custody or control of those departments and agencies, to be exercised with the concurrence of the Attorney General.

(2) Subject to subsection (b) of this Section and paragraph (1) of this subsection, the functions vested in the President by Section 104(e) are delegated to the heads of Executive departments and agencies in order to carry out their functions under this Order or the Act.

(k) The functions vested in the President by Section 104(f), (g), (h), (i)(11), and (j) of the Act are delegated to the heads of Executive departments and agencies in order to carry out the functions delegated to them by this Section. The exercise of authority under Section 104(h) of the Act shall be subject to the approval of the Administrator of the Office of Federal Procurement Policy.

Sec. 3. *Cleanup Schedules.* (a) The functions vested in the President by Sections 116(a) and the first two sentences of 105(d) of the Act are delegated to the heads of Executive departments and agencies with respect to facilities under the jurisdiction, custody or control of those departments and agencies.

(b) Subject to subsection (a) of this Section, the functions vested in the President by Sections 116 and 105(d) are delegated to the Administrator.

Sec. 4. *Enforcement.* (a) The functions vested in the President by Sections 109(d) and 122(e)(3)(A) of the Act, relating to development of regulations and guidelines, are delegated to the Administrator, to be exercised in consultation with the Attorney General.

(b)(1) Subject to subsection (a) of this Section, the functions vested in the President by Section 122 (except subsection (b)(1)) are delegated to the heads of Executive departments and agencies, with respect to releases or threatened releases not on the NPL where either the release is on or the sole source of the release is from any facility under the jurisdiction, custody or control of those Executive departments and agencies. These functions may be exercised only with the concurrence of the Attorney General.

(2) Subject to subsection (a) of this Section, the functions vested in the President by Section 109 of the Act, relating to violations of Section 122 of the Act, are delegated to the heads of Executive departments and agencies, with

respect to releases or threatened releases not on the NPL where either the release is on or the sole source of the release is from any facility under the jurisdiction, custody or control of those Executive departments and agencies. These functions may be exercised only with the concurrence of the Attorney General.

(c)(1) Subject to subsection (a) and (b)(1) of this Section, the functions vested in the President by Sections 106(a) and 122 of the Act are delegated to the Coast Guard with respect to any release or threatened release involving the coastal zone, Great Lakes waters, ports, and harbors.

(2) Subject to subsection (a) and (b)(2) of this Section, the functions vested in the President by Section 109 of the Act, relating to violations of Sections 103 (a) and (b), and 122 of the Act, are delegated to the Coast Guard with respect to any release or threatened release involving the coastal zone, Great Lakes waters, ports, and harbors.

(d)(1) Subject to subsections (a), (b)(1), and (c)(1) of this Section, the functions vested in the President by Sections 106 and 122 of the Act are delegated to the Administrator.

(2) Subject to subsections (a), (b)(2), and (c)(2) of this Section, the functions vested in the President by Section 109 of the Act, relating to violations of Sections 103 and 122 of the Act, are delegated to the Administrator.

(e) Notwithstanding any other provision of this Order, the authority under Sections 104(e)(5)(A) and 106(a) of the Act to seek information, entry, inspection, samples, or response actions from Executive departments and agencies may be exercised only with the concurrence of the Attorney General.

Sec. 5. *Liability.* (a) The function vested in the President by Section 107(c)(1)(C) of the Act is delegated to the Secretary of Transportation.

(b) The functions vested in the President by Section 107(c)(3) of the Act are delegated to the Coast Guard with respect to any release or threatened release involving the coastal zone, Great Lakes waters, ports, and harbors.

(c) Subject to subsection (b) of this Section, the functions vested in the President by Section 107(c)(3) of the Act are delegated to the Administrator.

(d) The functions vested in the President by Section 107(f)(1) of the Act are delegated to each of the Federal trustees for natural resources designated in the NCP for resources under their trusteeship.

(e) The functions vested in the President by Section 107(f)(2)(B) of the Act, to receive notification of the state natural resource trustee designations, are delegated to the Administrator.

Sec. 6. *Litigation.* (a) Notwithstanding any other provision of this Order, any representation pursuant to or under this Order in any judicial proceedings shall be by or through the Attorney General. The conduct and control of all litigation arising under the Act shall be the responsibility of the Attorney General.

(b) Notwithstanding any other provision of this Order, the authority under the Act to require the Attorney General to commence litigation is retained by the President.

(c) The functions vested in the President by Section 113(g) of the Act, to receive notification of a natural resource trustee's intent to file suit, are delegated to the heads of Executive departments and agencies with respect to response actions for which they have been delegated authority under Section 2 of this Order. The Administrator shall promulgate procedural regulations for providing such notification.

(d) The functions vested in the President by Sections 310 (d) and (e) of the Act, relating to promulgation of regulations, are delegated to the Administrator.

Sec. 7. *Financial Responsibility.* (a) The functions vested in the President by Section 107(k)(4)(B) of the Act are delegated to the Secretary of the Treasury.

The Administrator will provide the Secretary with such technical information and assistance as the Administrator may have available.

(b)(1) The functions vested in the President by Section 108(a)(1) of the Act are delegated to the Coast Guard.

(2) Subject to Section 4(a) of this Order, the functions vested in the President by Section 109 of the Act, relating to violations of Section 108(a)(1) of the Act, are delegated to the Coast Guard.

(c)(1) The functions vested in the President by Section 108(b) of the Act are delegated to the Secretary of Transportation with respect to all transportation related facilities, including any pipeline, motor vehicle, rolling stock, or aircraft.

(2) Subject to Section 4(a) of this Order, the functions vested in the President by Section 109 of the Act, relating to violations of Section 108(a)(3) of the Act, are delegated to the Secretary of Transportation.

(3) Subject to Section 4(a) of this Order, the functions vested in the President by Section 109 of the Act, relating to violations of Section 108(b) of the Act, are delegated to the Secretary of Transportation with respect to all transportation related facilities, including any pipeline, motor vehicle, rolling stock, or aircraft.

(d)(1) Subject to subsection (c)(1) of this Section, the functions vested in the President by Section 108 (a)(4) and (b) of the Act are delegated to the Administrator.

(2) Subject to Section 4(a) of this Order and subsection (c)(3) of this Section, the functions vested in the President by Section 109 of the Act, relating to violations of Section 108 (a)(4) and (b) of the Act, are delegated to the Administrator.

Sec. 8. *Employee Protection and Notice to Injured.* (a) The functions vested in the President by Section 110(e) of the Act are delegated to the Adminstrator.

(b) The functions vested in the President by Section 111(g) of the Act are delegated to the Secretaries of Defense and Energy with respect to releases from facilities or vessels under the jurisdiction, custody or control of their departments, respectively, including vessels bare-boat chartered and operated.

(c) Subject to subsection (b) of this Section, the functions vested in the President by Section 111(g) of the Act are delegated to the Administrator.

Sec. 9. *Management of the Hazardous Substance Superfund and Claims.* (a) The functions vested in the President by Section 111(a) of the Act are delegated to the Administrator, subject to the provisions of this Section and other applicable provisions of this Order.

(b) The Administrator shall transfer to other agencies, from the Hazardous Substance Superfund out of sums appropriated, such amounts as the Administrator may determine necessary to carry out the purposes of the Act. These amounts shall be consistent with the President's Budget, within the total approved by the Congress, unless a revised amount is approved by OMB. Funds appropriated specifically for the Agency for Toxic Substances and Disease Registry ("ATSDR"), shall be directly transferred to ATSDR, consistent with fiscally responsible investment of trust fund money.

(c) The Administrator shall chair a budget task force composed of representatives of Executive departments and agencies having responsibilities under this Order or the Act. The Administrator shall also, as part of the budget request for the Environmental Protection Agency, submit to OMB a budget for the Hazardous Substance Superfund which is based on recommended levels developed by the budget task force. The Administrator may prescribe reporting and other forms, procedures, and guidelines to be used by the agencies of the Task Force in preparing the budget request, consistent with budgetary reporting requirements issued by OMB. The Administrator shall prescribe

forms to agency task force members for reporting the expenditure of funds on a site specific basis.

(d) The Administrator and each department and agency head to whom funds are provided pursuant to this Section, with respect to funds provided to them, are authorized in accordance with Section 111(f) of the Act to designate Federal officials who may obligate such funds.

(e) The functions vested in the President by Section 112 of the Act are delegated to the Administrator for all claims presented pursuant to Section 111 of the Act.

(f) The functions vested in the President by Section 111(o) of the Act are delegated to the Administrator.

(g) The functions vested in the President by Section 117(e) of the Act are delegated to the Administrator, to be exercised in consultation with the Attorney General.

(h) The functions vested in the President by Section 123 of the Act are delegated to the Administrator.

(i) Funds from the Hazardous Substance Superfund may be used, at the discretion of the Administrator or the Coast Guard, to pay for removal actions for releases or threatened releases from facilities or vessels under the jurisdiction, custody or control of Executive departments and agencies but must be reimbursed to the Hazardous Substance Superfund by such Executive department or agency.

Sec. 10. *Federal Facilities.* (a) When necessary, prior to selection of a remedial action by the Administrator under Section 120(e)(4)(A) of the Act, Executive agencies shall have the opportunity to present their views to the Administrator after using the procedures under Section 1–6 of Executive Order No. 12088 of October 13, 1978, or any other mutually acceptable process. Notwithstanding subsection 1–602 of Executive Order No. 12088, the Director of the Office of Management and Budget shall facilitate resolution of any issues.

(b) Executive Order No. 12088 of October 13, 1978, is amended by renumbering the current Section 1–802 as Section 1–803 and inserting the following new Section 1–802:

"1–802. Nothing in this Order shall create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person."

Sec. 11. *General Provisions.* (a) The function vested in the President by Section 101(37) of the Act is delegated to the Administrator.

(b)(1) The function vested in the President by Section 105(f) of the Act, relating to reporting on minority participation in contracts, is delegated to the Administrator.

(2) Subject to paragraph 1 of this subsection, the functions vested in the President by Section 105(f) of the Act are delegated to the heads of Executive departments and agencies in order to carry out the functions delegated to them by this Order. Each Executive department and agency shall provide to the Administrator any requested information on minority contracting for inclusion in the Section 105(f) annual report.

(c) The functions vested in the President by Section 126(c) of the Act are delegated to the Administrator, to be exercised in consultation with the Secretary of the Interior.

(d) The functions vested in the President by Section 301(c) of the Act are delegated to the Secretary of the Interior.

(e) Each agency shall have authority to issue such regulations as may be necessary to carry out the functions delegated to them by this Order.

(f) The performance of any function under this Order shall be done in consultation with interested Federal departments and agencies represented on the NRT, as well as with any other interested Federal agency.

(g) The following functions vested in the President by the Act which have been delegated or assigned by this Order may be redelegated to the head of any Executive department or agency with his consent: functions set forth in Sections 2 (except subsection (b)), 3, 4(b), 4(c), 4(d), 5(b), 5(c), and 8(c) of this Order.

(h) Executive Order No. 12316 of August 14, 1981, is revoked.

Ronald Reagan

THE WHITE HOUSE,
January 23, 1987.

[FR Doc. 87-1842
Filed 1-27-87; 2:35 pm]
Billing code 3195-01-M

Rules and Regulations

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 1, 3, 103, 236, 242, and 292

[A.G. Order No. 1174-87]

Aliens and Nationality; Rules of Procedure for Proceedings Before Immigration Judges

AGENCY: Executive Office for Immigration Review, Department of Justice.

ACTION: Final rule.

SUMMARY: This final rule sets forth procedures to be followed in all matters brought before Immigration Judges, including deportation, exclusion, bond, and rescission proceedings, specifically excluding administrative proceedings involving withdrawal of school approval under 8 CFR 214 and departure-control hearings under 8 CFR Part 215. These regulatory changes are promulgated for the purpose of assisting in the expeditious, fair, and proper resolution of issues arising in such proceedings by providing the parties involved with clear, useful, and readily accessible procedural guidelines. To achieve this purpose, it has been necessary to amend or delete portions of Parts 1, 3, 103, 236, 242, and 292 of Title 8 of the Code of Federal Regulations, as well as add a number of new provisions to several parts of this chapter as discussed below. However, these rules of procedure are not intended to be read in a vacuum. Unless specifically noted to the contrary, each rule of procedure is intended to be construed harmoniously with existing regulations under this chapter.

EFFECTIVE DATE: March 2, 1987.

FOR FURTHER INFORMATION CONTACT: Gerald S. Hurwitz, Counsel to the Director, Executive Office for Immigration Review, 5203 Leesburg Pike, Suite 1609, Falls Church, Virginia 22041, (703) 756-6470.

SUPPLEMENTARY INFORMATION: A Departmental reorganization in January, 1983, created the Executive Office for Immigration Review (EOIR). This reorganization consolidated the Department's Immigration Review Program by placing the Immigration Judge (Special Inquiry Officer) function (formerly within the Immigration and Naturalization Service (INS)) with the Board of Immigration Appeals (BIA) in the newly created organization, thereby streamlining the Department's management of this important function and minimizing mission disparities within the INS. It has been determined that the promulgation of this set of uniform procedural rules would assist in the furtherance of program goals.

The regulatory change constitutes the repositioning of various procedural rules that exist throughout Title 8 of the Code of Federal Regulations, as well as some additional rules, into one section to create a set of easily accessible uniform rules. In order to maximize ease of access to the public, these rules of procedure (incorporating 27 new subsections) are promulgated as an entire new subpart C to Part 3 of this chapter, beginning with § 3.12.

These regulatory revisions were offered for public review in a notice of proposed rulemaking, A.G. Order No. 1113-85, published at 50 FR 51693 (December 19, 1985). The notice invited written public comments by January 21, 1986. Public response to the proposed regulation was diverse and extensive. All comments were considered and several changes were made based upon them. In addition, certain minor typographical word changes were made. Comments included requests for clarifications, specific word changes, requests for expansion and restriction of the parties' rights, as well as other modifications. What follows is a section-by-section analysis of the regulatory provisions as to their purpose and a discussion of comments concerning the sections.

8 CFR 3.12 briefly sets out the scope of the rules of procedure and is self-explanatory.

8 CFR 3.13 is the definition section for the rules contained in subpart C. "Administrative control" is a term of art intended to clarify jurisdictional issues and to ease the filing and handling of documents. "Charging document" is included to summarize all initiating documents to allow for one set of rules for all proceedings. The terms "filing" and "service" are defined to eliminate ambiguity. A commentator suggested that filing locations be expanded to include more locations. This would create serious administrative and logistical problems that render the suggestion unworkable. It was also suggested that filing upon receipt is too restrictive. After careful consideration, it has been decided that filing upon actual receipt will be maintained to create certainty as to the date of filing of documents. Time periods for filing are adequate. Many methods of express delivery are available to minimize difficulties in timely filings. It was also pointed out in the comments that § 3.11, although referenced, was not included in the rules. It will be separately promulgated as a final rule.

New sections 8 CFR 3.14 through 3.38 cover the 25 rules of procedure which will be applicable (except where specifically stated to the contrary) to all proceedings before Immigration Judges.

8 CFR 3.14 states when jurisdiction vests and proceedings commence before Immigration Judges. In order for EOIR to effectively manage its resources, it must have full control over the docketing of cases on its heavy calendars. Under 8 CFR 3.14(a), as revised, jurisdiction vests and proceedings commence when a charging document is filed with the Office of the Immigration Judge. 8 CFR 242.1 and 242.2 are amended to conform to this new rule. 8 CFR 242.7(a) is amended to limit the Service's ability to cancel an Order to Show Cause to the period prior to its filing with the Office of the Immigration Judge. Similarly, 8 CFR 242.7(b) regarding Service motions to dismiss is amended to become applicable to the Service after an Order to Show Cause is filed with the Office of the Immigration Judge. Adoption of these regulation changes will provide EOIR with the ability to utilize its resources efficiently by ensuring optimal scheduling of matters on its hearing calendars.

8 CFR 3.14(b) simply restates, for the sake of thoroughness and ease of reference, the rule found in 8 CFR 208.1(b) regarding an Immigration Judge's exclusive jurisdiction over asylum applications filed in conjunction

with pending matters. A commentator suggested that § 3.14 was not detailed enough to cover all situations. In our view, it is a simple, direct statement of jurisdiction. However, upon re-examination, a change was made separating out bond proceedings from these jurisdiction requirements, since bond proceedings often occur telephonically or in remote locations before charging documents arrive. To retain maximum flexibility and allow bond redetermination hearings to proceed in a timely manner they will be addressed separately in §§ 242.2(b) and 3.18. It was also suggested that service of the charging document should be included as a requirement before jurisdiction vests with the Immigration Judge. This is already the case since § 3.30 requires service of all documents on the other party before they can be considered by the Immigration Judge. There is no need to restate this in § 3.14. It was suggested that the old jurisdictional rule should be retained. This was considered and rejected, since EOIR requires the certainty of a filed document to control its docket. Strict time limits were suggested for the filing of Orders to Show Cause. This is not workable due to administrative difficulties inherent in the apprehension and processing of aliens. Other suggestions dealing with shortening the proceedings, such as allowing agreed terminations without Immigration Judge approval, does not permit the Immigration Judge the necessary control of the cases on the docket.

8 CFR 3.15 largely codifies the current practice of recognizing party representatives where retained in matters brought before Immigration Judges. The new rule does not conflict with certain specialized provisions for mandatory representation by Service attorneys because those provisions relate solely to the manner in which the Service is required to handle certain types of cases. One commentator requested more specificity with this revision. This has been rejected as the regulation is clear and workable as written.

8 CFR 3.16 deals with appearances by representatives. The new rule tightens current practice by allowing withdrawal or substitution of a representative during proceedings only in the discretion of the Immigration Judge and only upon written or oral motion (submitted without fee). 8 CFR 292.4 is also amended to conform to these revisions. This new rule change ensures maximum effective utilization of the Immigration Judge's time. Under current practice, considerable court time is lost through both non-appearances and last minute withdrawals by representatives. The new rule would give the Immigration Judges and the Board greater ability to control the proceedings without affecting the respondent/applicant's current ability to change his or her attorney or representative in subsequent proceedings. Commentators indicated that this is an undue intrusion on attorneys and their clients. It is a necessary control, however, for the proper functioning of the system and is standard practice in many other adjudication settings. Commentators raise the concern that pro bono programs would be adversely affected by the stricter appearance rules. However, since the Immigration Judge has the discretionary power to allow withdrawals and substitutions, adequate flexibility remains to accommodate pro bono representation. There were alternate suggestions made concerning limitations on attorney appearances. After careful consideration, to allow the Immigration Judge maximum flexibility and control, withdrawals and substitutions will be permitted only at the Immigration Judge's discretion.

A clarification was made in § 292.4, recognizing that in Immigration Judge and Board proceedings withdrawal and/or substitution is governed by §§ 3.16 and 3.36 respectively. The change was necessary because it appeared in the proposed language that § 3.16 also applied to cases before the Service.

8 CFR 3.17 deals with the scheduling of cases. As noted in the discussion regarding 8 CFR 3.13, the ability of Immigration Judges to control their calendars is critical to their ability to effectively deal with the caseload. This rule will significantly assist Immigration Judges in caseload management. This rule change requires a regulation change in 8 CFR 242.1 regarding notice of hearing. It was suggested that there be a set period of time for notice of hearing—30 days for example. This is unworkable as it is too inflexible, especially for detainees.

8 CFR 3.18 deals with the authority of Immigration Judges to redetermine custody and bond decisions made by the INS. Although the rule largely restates existing procedures for such hearings, some minor regulatory changes have been included to improve efficiency. In restructuring the availability of Immigration Judges for custody and bond cases, the rule reflects the separation of the Immigration Judges and creates a rational system for dealing with bond hearings. 8 CFR 242.2 has been amended to conform to the rules. Within the new organizational structure, it is anticipated that this rule will maximize the prompt availability of Immigration Judges for respondents applying for custody/bond redeterminations while at the same time causing an equitable distribution of the caseload among Immigration Judges.

In a further effort to improve administrative efficiency and increase productivity, the rule modifies the provision in 8 CFR 242.2 requiring the Immigration Judge in all custody/bond redeterminations to state the reasons for his/her decision in a written memorandum. Under the new rule, the Immigration Judge, subsequent to entering his/her decision on the appropriate EOIR form, would have the discretion to explain his/her decision to the parties involved either orally or in writing. In the final rule, after careful consideration of the public comments, it was decided to add a provision in § 242.2 requiring a written memorandum in any decision appealed to the Board. Also included is a word change in the first sentence of § 242.2(a) making issuance of the Order to Show Cause the starting time for arrest pursuant to the warrant, since warrants of arrest are not issued until issuance of an Order to Show Cause. Also, modified in the final rule is the sequence of locations which will entertain requests for bond redetermination. Step 3 in both §§ 3.18 and 242.2(b) has been modified to allow the Chief Immigration Judge's Office to direct which Immigration Judge's Office will be selected for handling a bond redetermination after the first two steps have been exhausted. This will allow for greater control, a more orderly procedure, and more equitable distribution of workload. Commentators suggested various clarifications and additions which were deemed undesirable, such as mandatory telephonic hearings. The rule as promulgated in final form maintains maximum flexibility while being responsive to due process concerns.

8 CFR 3.19 establishes a procedure for change of venue on motion by one of the parties, or on the Immigration Judge's own authority. Under this rule, such a motion could be granted by the Immigration Judge in his or her discretion provided good cause is shown. Although, no regulatory provisions currently exist providing for change of venue, such authority has been routinely exercised by Immigration Judges in the past pursuant to their authority under 8 CFR 236.1 (exclusion cases) and 242.8(a) (deportation cases) to take such actions as are necessary and appropriate (and not inconsistent with any other provisions of the Act) for

the disposition of cases. The Board has upheld the Immigration Judge's limited authority to change venue in *Matter of Wadas*, 17 I&N Dec. 346, 348 (BIA 1980) (exclusion cases) and *Matter of Seren*, 15 I&N Dec. 590, 591 (BIA 1976) (deportation cases). This rule makes uniform the Immigration Judge's authority to change venue in all proceedings. It is anticipated that this rule will significantly improve EOIR's ability to control its caseload and to improve overall efficiency in the hearing process. One commentator suggested that venue be set initially at the Office of the Immigration Judge where the charging documents are filed. This suggestion was well taken and included in the final rule. Also in the final rule, bond proceedings were excluded from this venue provision. Sections 3.18 and 242.2(b) were cited as the governing sections. This was done to maximize flexibility over bond proceedings which are not necessarily held at the place of venue of the underlying deportation case. Other commentators requested specific grounds for venue change. These were rejected as unworkable and inflexible. Immigration Judge discretion has been and will be adequate. It should be noted that this venue rule will be uniform and that Immigration Judges will have authority to change venue in both detained and nondetained exclusion and deportation cases.

8 CFR 3.20 will codify current practice and provide for prehearing conferences to be held in the discretion of the Immigration Judge for the purpose of narrowing issues, attaining stipulations between the parties, voluntarily exchanging information, or for any other purpose which might simplify, organize, and expedite the proceeding. Comments were diverse on this section ranging from the position that pre-hearing conferences are unnecessary and cause delay to the opposite extreme that they be mandatory. It has been determined that the pre-hearing conference section as written serves a useful limited purpose and will remain as drafted.

8 CFR 3.21 deals with interpreters. The rule will streamline current practice by authorizing federal employees (other than those employed by INS) to serve as interpreters without oath. To adopt this administrative improvement will necessitate a minor regulatory change in 8 CFR 242.12 which required all non-INS employed interpreters to be sworn before serving in deportation proceedings. It is anticipated that the rule will improve efficiency in Immigration Judge proceedings. Commentators suggested that all interpreters should be sworn in each case. This requirement is time consuming and unnecessary. Interpreters are generally screened for competence. Their competence has not been a major problem. If question arises, the Immigration Judge is free to administer an oath or allow questioning regarding the interpreters' competency. Any questions regarding interpreters' competence or veracity may be raised by the parties. The significant timesaving outweighs the requirement that an oath be taken in each case.

8 CFR 3.22 establishes a procedure for the submission of motions both prior to the rendering of a final order by the Immigration Judge as well as thereafter in the form of motions for reopening or reconsideration. The only novel aspect of the rule is the requirement that motions to reopen for the purpose of seeking some form of specific relief must be accompanied by the appropriate application and supporting documentation. This latter requirement, while previously nonmandatory, has been routinely followed in many Immigration Judge Offices with salutary results. It is anticipated that this rule will improve overall efficiency and fairness in the hearing process. Comments on this section range from the suggestion that motions be eliminated to the suggestions that they be expanded and made more specific. There was also the comment that the deadlines not be so stringently set. After considering the comments, it is our view that the rule as written provides both adequate due process safeguards and the flexibility to allow the Immigration Judges to properly control the making of motions. No changes have been made, therefore, in the final rule.

8 CFR 3.23 deals with the waiver of fees in Immigration Judge proceedings. The new rule codifies the Board's decision in *Matter of Chicas*, I.D. 2970 (BIA 1984), authorizing the use of an unsworn declaration (made pursuant to 28 U.S.C. 1746) in lieu of a sworn affidavit for the purpose of applying for a fee waiver on the basis of inability to pay. In an effort to avoid frivolous or undocumented waiver applications, the new rule uses more stringent language than its predecessor in 8 CFR 103.7(c) by requiring the respondent/applicant to substantiate his or her indigency in the affidavit or properly executed unsworn declaration. To conform to this change, minor changes are also made to §§ 3.3(b) and 103.7(c). Commentators point out that under the regulation an individual denied a fee waiver may lose the ability to file a timely appeal. This is a possibility, but it should be stressed that under the current system that situation exists and has not been a significant problem. Further, to allow a time period for payment after denial of fee waiver leaves open a substantial area for serious abuse. Respondents could routinely apply for fee waivers and litigate this issue separately. They could, thereby, gain a substantial amount of time before being forced to file an appeal with a payment of fee. Balancing the potential serious abuse that could result against the remote possibility of an individual unjustifiably losing appeal rights, the decision was made not to change the regulatory language.

8 CFR 3.24 provides the Immigration Judge with discretion for good cause to waive the presence of a respondent/applicant at a hearing where the alien is a minor child whose parent or parents are present. The new rule also authorizes the Immigration Judge to conduct hearings *in absentia* pursuant to section 242(b) of the Act with or without representation. It is anticipated that the rule will improve the efficiency of the hearing process without adversely affecting due process considerations. Most comments regarding this section centered on the *in absentia* hearing. Commentators wanted strict guidelines for use of *in absentia* hearings; others wanted mandatory *in absentia* hearings. It was decided that the statutory provisions provide the necessary guidelines for *in absentia* hearings, and that further regulatory guidelines would not be helpful. In the final analysis whether or not to proceed *in absentia* should be left to the sound discretion of the Immigration Judge.

8 CFR 3.25 combines and restates the contents of 8 CFR 236.2(a) and 242.16(a) regarding public access to hearings. The rule specifies that all hearings except exclusion hearings would be open to the public subject to the Immigration Judge's discretion to limit attendance based on space availability (with priority given to the press over the general public). The rule further provides that the Immigration Judge may limit attendance or hold a closed hearing to protect the parties, witnesses, or the public interest Commentators suggested more detailed guidelines concerning when hearings should be closed. The regulation as drafted provides maximum flexibility and allows the Immigration Judge to close hearings in situations deemed appropriate. This should be adequate to protect individuals, yet allow the basic hearing process to remain an open one.

8 CFR 3.26 deals with recording equipment permitted in Immigration Judge proceedings. The rule prohibits the use of any photographic, video,

electronic, or similar recording devices during proceedings other than the equipment used by the Immigration Judge to create the official record. Commentators cited the need for separate recording equipment for a number of reasons, such as immediate access to testimony to aid the attorney in further hearing preparation. This regulation is a codification of current general practice and is consistent with the rule in many courts. Attorneys may currently listen to the official tapes of the proceedings and may review the record of proceeding file. Transcripts are provided on appeal. It is also desirable that there be a single recording of the proceeding without other unofficial tapes or recordings characterized as "Records of Proceedings" that may or may not be complete. For these reasons the regulation barring other recordings will be retained.

8 CFR 3.27 deals with continuances. The rule codifies current procedures and restates in simpler terms the discretionary authority of Immigration Judges to grant continuances for good cause shown found in 8 CFR 242.13. The simplified language of the rule is not intended to conflict with or expand the discretionary limitations delineated in 8 CFR 242.13.

8 CFR 3.28 provides for the lodging of additional charges during deportation proceedings. In more simplified language, the rule restates the contents of 8 CFR 242.16(d) which deals with the same topic. This rule does not substantially change current practice. Commentators suggested an automatic continuance for a lodged charge so that time for a proper defense could be obtained. Often lodged charges can be answered immediately with little or no preparation. In these cases, it is not necessary to have a set, automatic continuance. Generally, if there is any need for a continuance after a lodged charge, such as for further research or preparation, the Immigration Judge will grant it. There was also the comment made that charges should be brought at one time, unless facts concealed by the alien are later uncovered. This appears to be an overly restrictive proposal. Since these proceedings require a flexible, somewhat informal approach, presumably with the granting of continuances for lodged charges in appropriate cases, there will be no deprivation of due process rights to mount a defense after a lodged charge.

8 CFR 3.29 deals with the filing of documents and applications. The rule provides the Immigration Judge with discretionary authority to set and extend limits for the filing of documents as well as any related responses thereto. Applications or documents not filed within the time limits set by the Immigration Judge are deemed waived. All documents and applications are required to be filed with the Office of the Immigration Judge having administrative control over the Record of Proceeding. Such applications or documents will not be considered filed until the required fee (if any) has been paid or a fee waiver pursuant to 8 CFR 3.23 has been obtained. This is a new rule that creates standardized filing procedures, particularly when read in conjunction with 8 CFR 3.11 (creation of administrative control offices) and 8 CFR 3.23 (fee waivers). It is anticipated that this rule will both clarify the document filing process and improve overall efficiency in Immigration Judge proceedings. Comments ranged from liberalizing the filing rule to restricting it further. It was suggested that there be a provision for untimely filing in certain circumstances. It was also suggested that filing locations should be expanded. The rule as drafted contains the necessary flexibility for the Immigration Judge to extend filing deadlines in appropriate cases. Presumably the Immigration Judges, through the exercise of sound discretion, will allow extensions in appropriate cases to eliminate the concerns of the commentators that individuals will be unjustly cut off from filing applications. As for expansion of filing locations, this would be unworkable administratively given EOIR's limited clerical resources.

8 CFR 3.30 establishes standards for service and size of documents. Section 3.30(a) (establishing specific requirements for service on the opposing party or parties) bolsters the concept of fundamental fairness and, in large measure, codifies existing practice in many Immigration Judge Offices. Section 3.30(b) (dealing with standardization of document size and manner of presentation) would ease handling and review of written materials during actual proceedings and reduce file storage problems after proceedings are completed. Commentators point out that many documents, especially foreign documents, are oversized. Also, other evidence such as photos come in various sizes. The rule does provide flexibility to allow for odd sized documents. Another commentator mentioned that indexing, pagination, and other organization of document requirements were onerous. This is simply good basic legal practice. It saves time and assists the Immigration Judge in evaluating evidence.

8 CFR 3.31 deals with translation of documents. The rule extends some translation requirements found in 8 CFR 103.2(b) to all Immigration Judge proceedings.

8 CFR 3.32 codifies current procedure and extends the requirement found in 8 CFR 242.14(d) that testimony of witnesses in deportation proceedings be under oath (or affirmation) to all proceedings before Immigration Judges. One commentator suggested that certain individuals, such as Immigration Judges or other officers, be designated as those who could administer an oath. It was contemplated in this rule that under normal circumstances the Immigration Judge will administer the oath. However, in certain circumstances such as telephonic hearings, the flexibility is left to allow for others to administer the oath.

8 CFR 3.33 establishes a uniform procedure for the taking of depositions in all Immigration Judge proceedings. The rule will significantly simplify, without fundamentally altering, the more detailed procedure prescribed in 8 CFR 242.24(e) for the taking of depositions in deportation cases. To conform to the new rule, § 242.14(e) is deleted and replaced with a condensed regulation authorizing the taking of depositions in accordance with new rule 8 CFR 3.33. This rule will provide adequate guidelines to the parties and preserve fundamental fairness in the hearing process without the complexity of its predecessor. Commentators suggested that in connection with depositions, discovery is desirable in these proceedings to narrow issues and gather evidence. In our view, this is unnecessary for proper consideration of the issues, and would unduly complicate these proceedings and open up a possible area of abuse and delay. Commentators suggested that the number of individuals designated to preside at the depositions be expanded to include other than officers. This is a useful modification and in the final rule the term "official" is substituted for "officer," thereby substantially broadening the possible designees.

8 CFR 3.34 deals with the essential function of creation and maintenance of Immigration Judge hearing records. This new rule requires that the Office of the Immigration Judge create and then control the Record of Proceeding. This rule is a corollary to 8 CFR 3.11 which designates some EOIR Immigration Judge field offices as administrative control offices. Comments stressed that access to the Record of Proceeding was important. They suggested more detailed guidelines and requirements for the

handling of the Record of Proceeding. It is our view that the rule as drafted provides the necessary authority for Immigration Judges to create and control the Record of Proceeding. No detailed guidelines are needed by regulation. Any additional procedures can be set up administratively. As to access, currently attorneys and respondents/applicants are able to review the files by arrangement with the appropriate Immigration Judge's Office. Procedures for copying documents and other related procedures have been set up in the offices. There is no need to reduce these procedures to regulations.

8 CFR 3.35 codifies current practice regarding decisions rendered in all Immigration Judge proceedings. The rule permits the Immigration Judge to give either a written or oral decision, unless specified otherwise elsewhere in this chapter. If the decision is written, the rule requires the Immigration Judge to serve it on the parties either by personal service or by first-class mail to the most current address in the Record of Proceeding. If the decision is oral, the Immigration Judge is required to state it in the presence of the parties at the conclusion of the hearings. For the sake of brevity, clarity, and in order to eliminate the inconsistent requirement of service on the alien of the Immigration Judge's written decision by the District Director, 8 CFR 236.5 is amended by deleting paragraphs (a), (b), (c) and inserting in their place a new conforming paragraph (a) that would reference back to the new rule. Existing paragraphs (d) and (e) of § 236.5 would be redesignated as paragraphs (b) and (c). A number of commentators stressed the need for some type of written decision in each case. Where necessary, this may be accomplished administratively by minute orders. They are currently being widely used by the Immigration Judges. There is no need for a regulation specifying the issuance of these minute orders. In addition, one commentator suggested that there be a certified mail requirement on service of all decisions. We find this procedure unnecessary to perfect service, particularly considering the cost involved.

8 CFR 3.36 establishes a uniform procedure for filing administrative appeals relating to Immigration Judge proceedings. The rule provides for appeals from decisions of Immigration Judges to the Board of Immigration Appeals pursuant to 8 CFR 3.1(b) and authorizes both parties to file briefs pursuant to 8 CFR 3.3(c). The new rule also requires that the notice of appeal be filed with the Office of the Immigration Judge having administrative control over the Record of Proceeding within ten (10) calendar days (13 if mailed) after service of the decision. In accordance with the Board of Immigration Appeal's interpretation of the term "day" under 8 CFR 1.1(h) in *Matter of Escobar*, 18 I&N Dec. 412 (BIA 1983), the rule extends the appeal time to the next business day if the final date for filing falls on a Saturday, Sunday, or legal holiday. It is anticipated that the rule will eliminate possible confusion in the appellate process and thereby improve overall efficiency. 8 CFR 3.3(a) (notice of appeal) has also been amended. To bring this provision into conformity with the rules of procedure, it has been amended to read "an appeal shall be taken by filing notice of appeal . . . with the Office of the Immigration Judge or the Service office having administrative jurisdiction over the case . . . ." It should be noted that the intent of this provision is to make clear that appeals of Immigration Judge matters are to be filed with the Office of the Immigration Judge and Service matters are to be filed with the INS office. The two offices are not interchangeable for the filing of any appeal. 8 CFR 3.4 (withdrawal of appeal) has also been changed in that "officer" has been changed to "office" in the fourth sentence. 8 CFR 3.7 (notice of certification) has been amended by changing "officer of the Service" to "Office of the Immigration Judge or Service office," in order to parallel the language of 8 CFR 3.3(a). Lastly, for the sake of uniformity, 8 CFR 236.7 (dealing with appeals in exclusion cases) has been changed to conform to the rules of procedure. The comments regarding the appeals section were varied. Most suggested technical changes, such as further clarification on the definition of "day." Other commentators mention that more cities should be included for filing and that outside transcribers should be allowed under certain circumstances. Each of these suggestions were considered and rejected, as being either unnecessary or unworkable. One change made after considering the comments and the proposed language of the regulation is an additional section (d) which requires a separate appearance to be filed before the Board upon appeal. Withdrawal of appearance will be allowed only with Board permission. This is being done to track the language of § 3.16 which includes a similar provision regarding Immigration Judges. The intent of this section is to clarify when an appearance begins and under what terms it continues at the Board level. It will create a uniform procedure at the board and Immigration Judge level. Another change in the final rule concerns § 236.7. In order to cover any possible appeal limitation contained in section 236, it was decided to broaden the language of the section by simply citing section 236 rather than 236(d) in the first line of the section.

Section 3.37 established when the decision is final. The rule is consistent with the provisions of 8 CFR 243.1 dealing with final orders of deportation. The rule clarifies and tightens the existing provision for exclusion and deportation cases found in 8 CFR 236.6 and 242.20 and provides a uniform rule for all Immigration Judge proceedings. Moreover, the rule provides that a decision by an Immigration Judge that has not been certified to the Board becomes final upon waiver of appeal or upon the expiration of the time to appeal, if no appeal is taken. In order to bring this rule into conformity with the chapter, 8 CFR 236.6 and 242.20 have been amended accordingly. One commentator suggested that if an individual waives an appeal thereby making the decision final, that the waiver must be written and signed. This will not be necessary since it will not add significantly to an oral waiver which will be made on the record in the proceeding.

8 CFR 3.38 authorizes the promulgation of local operating procedures for Immigration Judge Offices. This authorizes individual Immigration Judge Offices to establish, by majority written concurrence of the local judges and subject to the written approval of the Chief Immigration Judge, local operating procedures not inconsistent with existing regulation and these rules of procedure. This rule will significantly enhance the ability of individual Immigration Judge Offices to deal with problems unique to their locality and consequently enable them to improve regulatory efficiency. Commentators stressed that there is a danger in these local operating procedures of promulgating rules without proper notice and comment provisions. This will not occur since the local procedures envisioned will consist of basic housekeeping and administrative provisions not significantly impacting upon the rights of individuals. In addition, the local procedures must be consistent with the existing regulations.

Together these regulatory changes will both improve and expedite the hearing process before Immigration Judges. At the same time, the new rule, as a whole and in each of its individual

sections, retains all necessary due process considerations and remains within the spirit of the Immigration and Nationality Act as amended. In accordance with 5 U.S.C. 605(b), the Attorney General certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule will not be a major rule within the meaning of paragraph 1(b) of E.O. 12291.

List of Subjects

8 CFR Part 1

Definitions

8 CFR Parts 3, 103, 236, 242, and 292

Administrative practice and procedure, Aliens.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 1—DEFINITIONS

1. The authority citation for Part 1 is revised to read as follows: All other authority citations are removed.

Authority: 8 U.S.C. 1101; 28 U.S.C. 509, 510; 5 U.S.C. 301.

2. In § 1.1 paragraph (h) is revised to read as follows:

§ 1.1 Definitions.

* * * * *

(h) The term "day" when computing the period of time for taking any action provided in this chapter including the taking of an appeal, shall include Saturdays, Sundays, and legal holidays, except that when the last day of the period so computed falls on a Saturday, Sunday or a legal holiday, the period shall run until the end of the next day which is not a Saturday, Sunday, nor a legal holiday.

* * * * *

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

3. The authority citation for part 3 is revised to read as follows. All other authority citations are removed.

Authority: 8 U.S.C. 1103, 1362; 28 U.S.C. 509, 510, 1746; 5 U.S.C. 301; Sec. 2 Reorg. Plan No. 2 of 1950.

4. In § 3.3, the first two sentences of paragraph (a), and paragraph (b) are revised as follows:

§ 3.3 Notice of appeal.

(a) A party affected by a decision who is entitled under this chapter to appeal to the Board shall be given notice of his or her right to appeal. An appeal shall be taken by filing Notice of Appeal Form I–290A in triplicate with the Service office or Office of the Immigration Judge having administrative jurisdiction over the case, within the time specified in the governing sections of this chapter. * * *

(b) Fees. Except as otherwise provided in this section, a notice of appeal or a motion filed under this part by any person other than an officer of the Service shall be accompanied by the appropriate fee specified by, and remitted in accordance with, the provisions of § 103.7 of this chapter. In any case in which an alien or other party affected is unable to pay the fee fixed for an appeal or a motion, he or she shall file with the notice of appeal or the motion, his or her affidavit, or unsworn declaration made pursuant to 28 U.S.C. 1746, stating the nature of the motion or appeal and his or her belief that he or she is entitled to redress. Such document shall also establish his or her inability to pay the required fee, and shall request permission to prosecute the appeal or motion without prepayment of such fee. When such a document is filed with the officer of the Service or the Immigration Judge from whose decision the appeal is taken or with respect to whose decision the motion is addressed, such Service officer or Immigration Judge shall, if he or she believes that the appeal or motion is not taken or made in good faith, certify in writing his reasons for such belief for consideration by the Board. The Board may, in its discretion, authorize the prosecution of any appeal or motion without prepayment of fee.

* * * * *

5. In § 3.4 the first sentence is revised as follows:

§ 3.4 Withdrawal of appeal.

In any case in which an appeal has been taken, the party taking appeal may file a written withdrawal thereof with the office with whom the notice of appeal was filed. * * *

6. Section 3.7 is revised to read as follows:

§ 3.7 Notice of certification.

Whenever in accordance with the provisions of § 3.1(c), a case is required to be certified to the Board, the alien or other party affected shall be given notice of consideration. A case shall be certified only after an initial decision has been made and before an appeal has been taken. If it is known at the time the initial decision is made that the case will be certified, the notice of certification shall be included in such decision and no further notice of certification shall be required. If it is not known until after the initial decision is made that the case will be certified, the Service office or Office of the Immigration Judge having administrative control over the Record of Proceeding shall cause a Notice of Certification (Form I–290C) to be served upon the party affected. In either case, the notice shall inform the party affected that the case is required to be certified to the Board and that he or she has the right to make representation before the Board, including the making of a request for oral argument and the submission of a brief. If the party affected desires to submit a brief, it shall be submitted to the Service office or Office of the Immigration Judge having administrative control over the Record of Proceeding for transmittal to the Board within ten (10) days from the date of receipt of the notice of certification, unless for good cause shown such Service office or Office of the Immigration Judge or the Board extends the time within which the brief may be submitted. The case shall be certified and forwarded to the Board by the Service office or Office of the Immigration Judge having administrative jurisdiction over the case upon receipt of the brief, or upon the expiration of the time within which the brief may be submitted, or upon receipt of a written waiver of the right to submit a brief.

7. Part 3 is amended by adding a new Subpart C to read as follows:

Subpart C—Rules of Procedure for Immigration Judge Proceedings

Sec.

3.12 Scope of rules.
3.13 Definitions.
3.14 Jurisdiction & commencement of proceedings
3.15 Representation.
3.16 Appearances.
3.17 Scheduling of cases.
3.18 Custody/bond.
3.19 Change of venue.
3.20 Pre-hearing conferences.
3.21 Interpreters.
3.22 Motions.
3.23 Waivers of fees in Immigration Judge proceedings.
3.24 Waiver of presence of respondent/applicant.
3.25 Public access to hearings.
3.26 Recording equipment.
3.27 Continuances.
3.28 Additional charges in deportation hearings.
3.29 Filing documents and applications.
3.30 Service and size of documents.
3.31 Translation of documents.
3.32 Testimony.
3.33 Depositions.
3.34 Record of proceeding.
3.35 Decisions.
3.36 Appeals.
3.37 Finality of decision.
3.38 Local operating procedures.

Subpart C—Rules of Procedure for Immigration Judge Proceedings

§ 3.12 Scope of rules.

These rules are promulgated for the purpose of assisting in the expeditious, fair and proper resolution of matters coming before Immigration Judges. Except where specifically stated, these rules apply to all matters before Immigration Judges, including deportation, exclusion, bond, and rescission proceedings. Specifically excluded from applicability under these rules are administrative proceedings involving the withdrawal of school approval under 8 CFR 214 and departure-control hearings under 8 CFR 215.

§ 3.13 Definitions.

As used in this subpart:

Administrative Control—The term "administrative control" means custodial responsibility for the Record of Proceeding as specificed in 8 CFR 3.11.

Charging Document—The term "charging document" means the written instrument which initiates a proceeding before an Immigration Judge including an Order to Show Cause, a Notice to Applicant for Admission Detained for Hearing before Immigration Judge, and a Notice of Intention to Rescind and Request for hearing by Alien.

Filing—The term "filing" means the actual receipt of a document by the appropriate Office of the Immigration Judge.

Service—The term "service" means physically presenting or mailing a document to the appropriate party or parties.

§ 3.14 Jurisdiction & commencement of proceedings.

(a) Jurisdiction vests and proceedings before an Immigration Judge commence when a charging document is filed with the Office of the Immigration Judge except for bond proceedings as provided in 8 CFR 3.18 and 242.2(b).

(b) When the Immigration Judge has jurisdication over the underlying proceeding, sole jurisdiction over applications for asylum shall lie with the Immigration Judge.

§ 3.15 Representation.

(a) The government may be represented in proceedings before an Immigration Judge.

(b) The respondent/applicant may be represented in proceedings before an Immigration Judge by an attorney or other representative of his or her choice in accordance with 8 CFR 292, at no expense to the government.

§ 3.16 Appearances.

(a) In any proceeding before an Immigration Judge wherein the respondent/applicant is represented, the attorney or representative shall file a Notice of Appearance on the appropriate form with the Office of the Immigration Judge.

(b) Withdrawal or substitution of an attorney or representative may be permitted by an Immigration Judge during proceedings only upon oral or written motion submitted without fee.

§ 3.17 Scheduling of cases.

All cases shall be scheduled by the Office of the Immigration Judge. The Office of the Immigration Judge shall be responsible for providing notice of the time, place, and date of the hearing to the government and respondent/applicant.

§ 3.18 Custody/bond.

(a) Custody and bond redeterminations made by the INS pursuant to 8 CFR 242 may be reviewed by an Immigration Judge pursuant to 8 CFR 242.

(b) Application for bond redetermination by a respondent, his or her attorney or representative may be made orally, in writing, in person, or in the discretion of the Immigration Judge, by telephone.

(c) Application for the exercise of such authority must be made in the following order:

(1) If the alien is detained, the Immigration Judge Office at or nearest the place of detention;

(2) The Immigration Judge Office having administrative control over the case;

(3) The Office of the Chief Immigration Judge for designation of an appropriate Office of the Immigration Judge.

(d) Consideration under this paragraph by the Immigration Judge of an application or request of an alien regarding custody or bond shall be separate and apart from any deportation hearing or proceeding, and shall form no part of such hearing or proceeding.

(e) The determination of an Immigration Judge in respect to custody status or bond redetermination shall be entered on the appropriate form at the time such decision is made and the parties shall be informed orally or in writing as to the reasons for the decision.

§ 3.19 Change of venue.

(a) Except for bond proceedings as provided in §§ 3.18 and 242.2(b), venue shall lie at the Office of the Immigration Judge where the Service files a charging document.

(b) The Immigration Judge, for good cause, may change venue on motion by one of the parties, or upon his or her own authority after the charging document has been filed with the Office of the Immigration Judge.

(c) No change of venue shall be granted without identification of a fixed street address where the respondent/applicant may be reached for further hearing notification.

§ 3.20 Pre-hearing conferences.

Pre-hearing conferences may be scheduled at the discretion of an Immigration Judge. The conference may be held to narrow issues, attain stipulations between the parties, voluntarily exchange information, and otherwise simplify and organize the proceeding.

§ 3.21 Interpreters.

Any person acting as an interpreter in a hearing shall swear or affirm to interpret and translate accurately, unless the interpreter is an employee of the United States Government, in which event no such oath or affirmation shall be required.

§ 3.22 Motions.

(a) *Pre-Decision Motions.* Unless otherwise permitted by the Immigration Judge, motions submitted prior to the final order of an Immigration Judge shall be in writing and shall state, with particularity the grounds therefore, the relief sought, and the jurisdiction. The Immigration Judge may set and extend time limits for the making of motions and replies thereto. A motion shall be deemed unopposed unless timely response is made.

(b) *Reopening/Reconsideration.* (1) Motions to reopen or reconsider a decision of the Immigration Judge must be filed with the Office of the Immigration Judge having administrative control over the Record of Proceeding. Such motions shall comply with applicable provisions of 8 CFR 208.11 and 242.22. Any motion to reopen for the purpose of acting on an application for relief must be accompanied by the appropriate application for relief and all supporting documents. The Immigration Judge may set and extend time limits for replies to motions to reopen or reconsider. A motion shall be deemed unopposed unless timely response is made.

(2) When requested in conjunction with a motion to reopen/reconsider, the Immigration Judge may stay the

execution of a final order of deportation or exclusion.

§ 3.23 Waivers of fees in immigration Judge proceedings.

Any fees pertaining to a matter within the Immigration Judge's jurisdiction may be waived by the Immigration Judge upon a showing that the respondent/applicant is incapable of paying the fees because of indigency. A properly executed affidavit or unsworn declaration made pursuant to 28 U.S.C. 1746 by the respondent/applicant must accompany the request for waiver of fees and shall substantiate the indigency of the respondent/applicant.

§ 3.24 Waiver of presence of respondent/applicant.

The Immigration Judge may, for good cause, waive the presence of a respondent/applicant at the hearing where the alien is represented or where the alien is a minor child whose parent(s) is present. In addition, *in absentia* hearings may be held pursuant to section 242(b) of the Act with or without representation.

§ 3.25 Public access to hearings.

All hearings, other than exclusion hearings, shall be open to the public except that:

(a) Depending upon physical facilities, the Immigration Judge may place reasonable limitations upon the number in attendance at any one time with priority being given to the press over the general public;

(b) For the purpose of protecting witnesses, parties, or the public interest, the Immigration Judge may limit attendance or hold a closed hearing.

§ 3.26 Recording equipment.

The only recording equipment permitted in the proceeding will be the equipment used by the Immigration Judge to create the official record. No other photographic, video, electronic, or similar recording device will be permitted to record any part of the proceeding.

§ 3.27 Continuances.

The Immigration Judge may grant a motion for continuance for good cause shown.

§ 3.28 Additional charges in deportation hearings.

At any time during the proceeding, additional or substituted charges of deportability and/or factual allegations may be lodged by the Service in writing. The respondent shall be served with a copy of these additional charges and allegations and may be given a reasonable continuance to respond thereto.

§ 3.29 Filing documents and applications.

All documents and applications to be considered in a proceeding before an Immigration Judge must be filed with the Office of the Immigration Judge having administrative control over the Record of Proceeding. Filing will be considered effective only after the payment of applicable fees or the waiver of fees pursuant to 8 CFR 3.23. The Immigration Judge may set and extend time limits for the filing of applications and related documents and the responses thereto, if any. If an application or related document is not filed within the time set by the Immigration Judge, the opportunity to file that application shall be deemed waived.

§ 3.30 Service and size of documents.

(a) A copy of all documents (including proposed exhibits or applications) filed with or presented to the Immigration Judge shall be simultaneously served by the presenting party on the opposing party or parties. Such service shall be in person or by first class mail to the most recent address contained in the Record of Proceeding. A certification showing service to the opposing party or parties on a date certain shall accompany any filing with the Immigration Judge unless service is made on the record during the hearing. Any documents or applications not containing such certification will not be considered by the Immigration Judge unless service is made on the record during a hearing.

(b) Unless otherwise permitted by the Immigration Judge, all written material presented to Immigration Judges including offers of evidence, correspondence, briefs, memoranda, or other documents must be submitted on 8½" × 11" size paper. The Immigration Judge may require that exhibits and other written material presented be indexed, paginated, and that a table of contents be provided.

§ 3.31 Translation of documents.

Any foreign language document offered by a party in a proceeding shall be accompanied by an English language translation and a certification that the translator is competent to translate and that the translation is accurate.

§ 3.32 Testimony.

Testimony of witnesses appearing at the hearing shall be under oath or affirmation.

§ 3.33 Depositions.

(a) If an Immigration Judge is satisfied that a witness is not reasonably available at the place of hearing and that said witness' testimony or other evidence is essential, the Immigration Judge may order the taking of deposition either at his or her own instance or upon application of a party.

(b) Such order shall designate the official by whom the deposition shall be taken, may prescribe and limit the content, scope, or manner of taking the deposition, and may direct the production of documentary evidence. The Immigration Judge may also issue a subpoena in the event of the refusal or willful failure of a witness within the United States to appear, give testimony, or produce documentary evidence after due notice.

(c) The witness and all parties shall be notified as to the time and place of the deposition by the official designated to conduct the deposition.

(d) Testimony shall be given under oath or affirmation and shall be recorded verbatim.

(e) The official presiding at the taking of the deposition shall note but not rule upon objections, and shall not comment on the admissibility of evidence or on the credibility and demeanor of the witness.

§ 3.34 Record of proceeding.

The Office of the Immigration Judge shall create and control the Record of Proceeding.

§ 3.35 Decisions.

A decision may be written or oral. If the decision is written, it shall be served on the parties by first class mail to the most recent address contained in the Record of Proceeding or by personal service. If a decision is oral, it shall be stated by the Immigration Judge in the presence of the parties at the conclusion of the hearing.

§ 3.36 Appeals.

(a) Decisions of Immigration Judges may be appealed to the Board of Immigration Appeals as authorized by 8 CFR 3.1(b).

(b) The notice of appeal of the decision shall be filed with the Office of the Immigration Judge having administrative control over the Record of Proceeding within ten (10) calendar days after service of the decision. Time will be 13 days if mailed. If the final date for filing falls on a Saturday, Sunday, or legal holiday, this appeal time shall be extended to the next business day.

(c) Briefs may be filed by both parties pursuant to 8 CFR 3.3(c).

(d) In any proceeding before the Board wherein the respondent/applicant is represented, the attorney or

representative shall file a notice of appearance on the appropriate form. Withdrawal or substitution of an attorney or representative may be permitted by the Board during proceedings only upon written motion submitted without fee.

§ 3.37 Finality of decision.

Except when certified to the Board, the decision of the Immigration Judge becomes final upon waiver of appeal or upon expiration of the time to appeal if no appeal is taken.

§ 3.38 Local operating procedures.

An Office of the Immigration Judge having administrative control over Records of Proceedings may establish local operating procedures, provided that:

(a) Such operating procedure(s) shall not be inconsistent with any provision of this chapter;

(b) A majority of the judges of the local Office of the Immigration Judge shall concur in writing therein; and

(c) The Chief Immigration Judge has approved the proposed operating procedure(s) in writing.

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

8. The authority citation for Part 103 is revised to read as follows. All other authority citations are removed.

Authority: 5 U.S.C. 552(a); 8 U.S.C. 1101, 1103, 1201, 1301–1305, 1351, 1443, 1454, 1455; 28 U.S.C. 1746; 7 U.S.C. 2243; 31 U.S.C. 9701; E.O. 12356.

9. Section 103.7(c)(1) the first sentence is revised to read as follows:

§ 103.7 Fees.

* * * * *

(c) Waiver of Fees. (1) Except as otherwise provided in this paragraph and in § 3.3(b) of this chapter, any of the fees prescribed in paragraph (b) of this section relating to applications, petitions, appeals, motions, or requests may be waived by the Immigration Judge in any case under his/her jurisdiction in which the alien or other party affected is able to substantiate that he or she is unable to pay the prescribed fee. The person seeking a fee waiver must file his or her affidavit, or unsworn declaration made pursuant to 28 U.S.C. 1746, asking for permission to prosecute without payment of fee of the applicant, petition, appeal, motion, or request, and stating his or her belief that he or she is entitled to or deserving of the benefit requested and the reasons for his or her inability to pay. * * *

* * * * *

PART 236—EXCLUSION OF ALIENS

10. The authority citation for Part 236 is revised to read as follows. All other authority citations are removed.

Authority: 8 U.S.C. 1103, 1182, 1224, 1225, 1226, 1252, 1255, 1362.

11. In § 236.5, paragraphs (a), (b) and (c) are removed; paragraphs (d) and (e) are redesignated as paragraphs (b) and (c); and a new paragraph (a) is added to read as follows:

§ 236.5 Decision of the Immigration Judge; Notice to the Applicant.

(a) *Decision.* The Immigration Judge shall inform the applicant of his or her decision in accordance with 8 CFR 3.35.

* * * * *

12. Section 236.6 is revised to read as follows:

§ 236.6 Finality of order.

The decision of the Immigration Judge shall become final in accordance with 8 CFR 3.37.

13. Section 236.7 is revised to read as follows:

§ 236.7 Appeals.

Except as limited by section 236 of the Act, an appeal from a decision of an Immigration Judge under this Part may be taken by either party pursuant to 8 CFR 3.36.

PART 242—PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES: APPREHENSION, CUSTODY, HEARING, AND APPEAL

14. The authority for Part 242 is revised to read as follows: All other authority citations are removed.

Authority: 8 U.S.C. 1101, 1103, 1182, 1184, 1252, 1254, 1255, 1357, 1362; E.O. 12356. Title I of Pub. L. 95–145 enacted Oct. 28, 1977.

15. In § 242.1, paragraphs (a) and (b) are revised to read as follows:

§ 242.1 Order to show cause and notice of hearing.

(a) *Commencement.* Every proceeding to determine the deportability of an alien in the United States is commenced by the filing of an Order to Show Cause with the Office of the Immigration Judge. In the proceeding the alien shall be known as the respondent. Orders to Show Cause may be issued by District Directors, Acting District Directors, Deputy District Directors, Assistant District Directors, for Investigations, and Officers in Charge at Agana, GU; Albany, NY; Charlotte Amalie, VI; Cincinnati, OH; Hammond, IN; Memphis, TN; Milwaukee, WI; Norfolk, VA; Oklahoma City, OK; Pittsburgh, PA; Providence, RI; Salt Lake City, UT; St. Louis, MO; and Spokane, WA.

(b) *Statement of Nature of Proceedings.* The Order to Show Cause shall contain a statement of the nature of the proceeding, the legal authority under which the proceeding is conducted, a concise statement of factual allegations informing the respondent of the act or conduct alleged to be in violation of the law, and a designation of the charge against the respondent and of the statutory provisions alleged to have been violated. The Order shall require the respondent to show cause why he should not be deported. The Order shall call upon the respondent to appear before an Immigration Judge for a hearing at a time and place which shall be specified by the Office of the Immigration Judge.

* * * * *

16. In § 242.2, the first sentence of paragraph (a) introductory text and paragraph (b) are revised to read as follows:

§ 242.2 Apprehension, custody, and detention.

(a) *Warrant of arrest.* At the time of issuance of the Order to Show Cause or at any time thereafter and up to the time the respondent becomes subject to supervision under the authority contained in section 242(d) of the Act, the respondent may be arrested and taken into custody under the authority of a warrant of arrest. * * *

(b) *Authority of Immigration Judge; Appeals.* After an initial determination pursuant to paragraph (a) of this section, and at any time before a deportation order becomes administratively final, upon application by the respondent for release from custody or for amelioration of the conditions under which he or she may be released, an Immigration Judge may exercise the authority contained in section 242 of the Act to continue to detain a respondent in, or release from custody, and to determine whether a respondent shall be released under bond, and the amount thereof, if any. Application for the exercise of such authority must be made in the following order: First, if the alien is detained, the Immigration Judge Office at or nearest the place of detention; second, the Immigration Judge Office having administrative control over the case; third, the Office of the Chief Immigration Judge for designation of an appropriate Office of the Immigration Judge. However, if the respondent has been released from custody, such application must be made within seven (7) days after the date of such release.

Thereafter, application by a released respondent for modification of the terms release may be made only to the District Director. In connection with such application the Immigration Judge shall advise the respondent of his right to representation by counsel of his or her choice at no expense to the government. He or she shall also be advised of the availability of free legal services programs qualified under Part 292(a) of this chapter and organizations recognized pursuant to § 292.2 of this chapter, located in the district where his or her application is to be heard. The Immigration Judge shall ascertain that the respondent has received a list of such programs, and the receipt by the respondent of a copy of Form I–618, Written Notice of Appeal Rights. Upon rendering a decision on an application under this section, the Immigration Judge (or District Director if he renders the decision) shall advise the alien of his or her appeal rights under this section. The determination of the Immigration Judge in respect to custody status or bond redetermination shall be entered on the appropriate EOIR form at the time such decision is made, and the parties shall be promptly informed orally or in writing as the reasons for the Judge's decision. Consideration under this paragraph by the Immigration Judge of an application or request of a alien regarding custody or bond shall be separate and apart from any deportation hearing or proceeding under this part, and shall form no part of such hearing or proceeding. The determination of the Immigration Judge as to custody status or bond may be based upon any information which is available to the Immigration Judge or which is presented to him by the alien or the Service. The alien and the Service may appeal to the Board of Immigration Appeals from any such determination. If the determination is appealed, a written memorandum shall be prepared by the Immigration Judge giving reasons for the decision. After a deportation order becomes administratively final, or if recourse to the Immigration Judge is no longer available because of the expiration of the seven-day period aforementioned, the respondent may appeal directly to the Board from a determination by the District Director, Acting District Director, Deputy District Director, Assistant District Director for Investigations, or Officer in Charge of an office enumerated in § 242.1(a), except that no appeal shall be allowed when the Service notifies the alien that it is ready to execute the order of deportation and takes him into custody for that purpose. An appeal to the Board shall be taken from a determination by an Immigration Judge pursuant to § 3.36 of this chapter. An appeal to the Board taken from an appealable determination by the District Director, Acting District Director, Deputy District Director, Assistant District Director for Investigations, or Officer in Charge of an office enumerated in § 242.1(a), shall be perfected by filing a notice of appeal with the District Director within 10 days after the date when written notification of the determination is served upon the respondent and the Service. Upon the filing of a notice of appeal from a District Director's determination, the District Director shall immediately transmit to the Board all records and information pertaining to that determination. The filing of an appeal from a determination of an Immigration Judge or a District Director shall not operate to delay compliance, during the pendency of the appeal, with the custody directive from which appeal is taken, or to stay the administrative proceedings or deportation.

* * * * *

17. In § 242.5, paragraph (b) the first two sentences are revised to read as follows:

§ 242.5 Voluntary departure prior to commencement of hearing.

* * * * *

(b) *Application.* Any alien who believes himself or herself to be eligible for voluntary departure under section 242(b) of the Act may apply therefore at any office of the Service any time prior to the commencement of deportation proceedings against him or her. The officers designated in paragraph (a) of this section may deny or grant the application and determine the conditions under which the alien's departure shall be effected. * * *

* * * * *

18. In § 242.7, paragraphs (a) and (b) are revised to read as follows:

§ 242.7 Cancellation proceedings.

(a) *Cancellation of Order to Show Cause.* Any District Director, Acting District Director, Deputy District Director, Assistant District Director for Investigations, or Officer-in-Charge of an office enumerated in § 242.1(a) of this part may cancel an Order to Show Cause prior to jurisdiction vesting with the Immigration Judge pursuant to § 3.14 of this chapter provided the officer is satisfied that:

(1) The respondent is a national of the United States;

(2) The respondent is not deportable under immigration laws;

(3) The respondent is deceased;

(4) The respondent is not in the United States; or

(5) The Order to show Cause was improvidently issued.

(b) *Motion to dismiss.* After commencement of proceedings pursuant to § 3.14 of this chapter, any officer enumerated in paragraph (a) of this section may move for dismissal of the matter on the grounds set out under paragraph (a) of this section. Dismissal of the matter shall be without prejudice to the alien or the Service.

* * * * *

19. Section 242.12 is revised to read as follows:

§ 242.12 Interpreter.

Any person acting as interpreter in a hearing before an Immigration Judge under this part shall be sworn to interpret and translate accurately, unless the interpreter is an employee of the United States Government, in which event no such oath shall be required.

20. Section 242.13 is revised to read as follows:

§ 242.13 Postponement and adjournment of hearing.

After the commencement of the hearing, the Immigration Judge may grant a reasonable adjournment either at his or her own instance or, for good cause shown, upon application by the respondent or the Service.

21. In § 242.14, paragraph (e) is revised to read as follows:

§ 242.14 Evidence.

* * * * *

(e) *Depositions.* The Immigration Judge may order the taking of depositions pursuant to § 3.33 of this chapter.

22. In § 242.16, the first three sentences of paragraph (d) are revised to read as follows:

§ 242.16 Hearing.

* * * * *

(d) *Additional charges.* The Service may at any time during a hearing lodge additional charges of deportability, including factual allegations, against the respondent. Copies of the additional factual allegations and charges shall be submitted in writing for service on the respondent and entry as an exhibit in the record. The Immigration Judge shall read the additional factual allegations and charges to the respondent and explain them to him or her. * * *

* * * * *

23. Section 242.20 is revised to read as follows:

§ 242.20 Finality of order.

The decision of the Immigration Judge shall become final in accordance with 8 CFR 3.37.

PART 292—REPRESENTATION AND APPEARANCES

24. The authority citation for Part 292 is revised to read as follows: All other authority citations are removed.

Authority: 8 U.S.C. 1103, 1362.

25. In § 292.4, paragraph (a) is revised to read as follows:

§ 292.4 Appearances.

(a) An appearance shall be filed on the appropriate form by the attorney or representative appearing in each case. During Immigration Judge or Board proceedings, withdrawal and/or substitution of counsel is permitted only in accordance with §§ 3.16 and 3.36 respectively. During proceedings before the Service, substitution may be permitted upon the written withdrawal of the attorney or representative of record, or upon notification of the new attorney or representative. When an appearance is made by a person acting in a representative capacity, his or her personal appearance or signature shall constitute a representation that under the provisions of this chapter he or she is authorized and qualified to represent. Further proof of authority to act in a representative capacity may be required.

* * * * *

Dated: January 7, 1987.

Edwin Meese III,

Attorney General.

[FR Doc. 87-1726 Filed 1-28-87; 8:45 am]

BILLING CODE 4410-01-M

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8 CFR Parts 3 and 103

[AG Order No. 1175-87]

Office of the Chief Special Inquiry Officer; Designation of Judges

AGENCY: Executive for Office Immigration Review, Department of Justice.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations concerning the Executive Office for Immigration Review (EOIR) by replacing the seldom used terms "Chief Special Inquiry Officer" and "Special Inquiry Officer" with their current equivalents of "Chief Immigration Judge" and "Immigration Judge." This final rule further amends the regulations concerning EOIR by adding a new section which notes the designation of some Immigration Judge offices within EOIR as administrative control offices with the responsibility for the creation and maintenance of the Records of Proceedings within the geographical areas assigned to them. In order to conform existing regulations to this new rule, it is necessary to make minor technical amendments to 8 CFR 103.8 and 103.10. These sections relate, respectively, to the Immigration and Naturalization Service's definitions of the nature of their records relevant to the Freedom of Information Act and the Service's authority to grant or deny FOIA requests for materials contained in Records of Proceedings before Immigration Judges.

EFFECTIVE DATE: January 29, 1987.

FOR FURTHER INFORMATION CONTACT: Gerald S. Hurwitz, Counsel to the Director, Executive Office for Immigration Review, 5203 Leesburg Pike, Suite 1609, Falls Church, Virginia 22041 (telephone 703-756-6470).

SUPPLEMENTARY INFORMATION: A Departmental reorganization in January, 1983, created the Executive Office for Immigration Review. This reorganization consolidated the Department's immigration review program by placing the Immigration Judge (Special Inquiry Officer function (formerly within the Immigration and Naturalization Service (INS)) with the Board of Immigration Appeals (BIA) in a new organization, thereby streamlining the Department's management of this important function and minimizing mission disparities within the INS.

Although the terms "Immigration Judge" and "Special Inquiry Officer" are defined as interchangeable at 8 CFR 1.1(1), Part 3 of this chapter is being amended for the sake of clarity and consistent usage by removing the seldom used terms "Chief Special Inquiry Officer" and "Special Inquiry Officer" and inserting, in their place, the terms more prevalent in current usage of "Chief Immigration Judge" and "Immigration Judge."

This final rule also involves an additional change in agency operations. It became readily apparent soon after the creation of EOIR as an independent Departmental entity, that if the new organization were to successfully execute its assigned responsibilities, various changes would have to be made in existing operational procedures, including ultimate transfer to EOIR of custodial control of Records of Proceedings from INS. The anticipated benefits from this latter operational change included the elimination of any residual jurisdictional confusion by clarifying the proper locations for the filing of documents and correspondence by the parties, as well as simplification of the records handling function for both EOIR and INS clerical staff.

In order to complete the transfer of custodial control of this records system to EOIR, a new § 3.11, is added to Subpart B of Part 3 of this chapter, noting the designation of some Immigration Judge offices as administrative control offices for the Records of Proceedings originating within specified geographical areas. A complete listing of these offices and their areas of geographical responsibility will be made available to the public.

In order to conform existing regulations to the new rule, minor technical changes have been made to 8 CFR 103.8 and 103.10. 8 CFR 103.8 was amended by deleting Orders to Show Cause from the list of documents relevant to initiating proceedings before the Service. 8 CFR 103.10 was amended by deleting Records of Proceedings (maintained by EOIR) from the scope of documents subject to the INS's control for purposes of processing requests for information under FOIA. Compliance with 5 U.S.C. 533 as to notice of proposed rulemaking and delayed effective date is unnecessary as this rule relates to agency management and organization. This is not a major rule within the meaning of section 1(b) of E.O. 12291.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 8 CFR Parts 3 and 103

Administrative practice and procedure, Aliens.

Accordingly, Chapter 1 of Title 8 of the Code of Federal Regulations is revised to read as follows:

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

1. The authority citation for Part 3 continues to read as follows:

Authority: 8 U.S.C. 1103, 1362; 28 U.S.C. 509, 510, 1746; 5 U.S.C. 301; Sec. 2 Reorg. Plan No. 2 of 1950.

2. In Part 3, all references to "Chief Special Inquiry Officer" and "Special Inquiry Officer" throughout Part 3 are changed to read "Chief Immigration Judge" and "Immigration Judge."

3. In Part 3, a new § 3.11 is added to read as follows: